

**Notice of Allowability**

Application No.

10/056,772

Examiner

Quang D. Thanh

Applicant(s)

KOST, JONATHAN

Art Unit

3764

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--**

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to an after-final amendment filed on 10/18/04.
2. ☒ The allowed claim(s) is/are 3-5, 10-20 and 27-35.
3. ☒ The drawings filed on \_\_\_\_\_ are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☐ All    b) ☐ Some\*    c) ☐ None    of the:
    1. ☐ Certified copies of the priority documents have been received.
    2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
  6. ☐ CORRECTED DRAWINGS ( as "replacement sheets") must be submitted.
    - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review ( PTO-948) attached
      - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
    - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

**Attachment(s)**

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO-1449 or PTO/SB/08),  
Paper No./Mail Date \_\_\_\_\_
4. ☐ Examiner's Comment Regarding Requirement for Deposit  
of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☐ Interview Summary (PTO-413),  
Paper No./Mail Date \_\_\_\_\_
7. ☐ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other \_\_\_\_\_

### **DETAILED ACTION**

1. This office action is responsive to the after-final amendment filed on 10/18/2004. As directed by the amendment: claims 1-2, 6-9, 21-26, and 36-40 have been cancelled. Thus, claims 3-5, 10-20, and 27-35 are presently pending in this application.

### ***Allowable Subject Matter***

2. Claims 3-5, 10-20, and 27-35 are allowed.

3. The following is an examiner's statement of reasons for allowance:

Re claims 3-5, the prior art of record fails to teach or render obvious a myotherapy massage device comprising: two laterally spaced massage heads, each massage head having vibration means; a means for positioning the massage heads vertically relative to one another; a means for positioning the massage heads laterally relative to one another; wherein each massage head has a motor housing enclosing the vibration means, wherein the motor housing comprises: a tube having a bottom end, and a top end; a bottom cap disposed on the bottom end; a top cap disposed on the top end opposite the bottom cap; wherein the vibration means is disposed within the motor housing; and in combination with all the elements and further including a retention plate disposed between the top and bottom ends of the tube wherein the top cap contacts and rests upon the retention plate, thereby creating top and bottom spaces within the motor housing such that the top space adjacent the top cap is smaller than the bottom space adjacent the bottom cap.

Re claims 10-11, the prior art of record fails to teach or render obvious a myotherapy massage device having all the features as described above, and in combination with all the elements and further including a coil compression spring as substantially claimed by applicant.

Re claim 12, the prior art of record fails to teach or render obvious a myotherapy massage device having all the features as described above, and in combination with all the elements and further including an edge circumnavigating the tube adjacent the bottom end of the tube such that some length of tube extends therebelow.

Re claims 13-20 and 27-31, the prior art of record fails to teach or render obvious a myotherapy massage device having two laterally spaced massage heads, with each massage head having vibration means, a means for positioning the massage heads vertically relative to one another; a means for positioning the massage heads laterally relative to one another; and in combination with all the elements and the means for positioning the massage heads laterally and/or means for positioning the massage heads vertically further comprising other elements as substantially claimed by applicant.

Re claims 32-35, the prior art of record fails to teach or render obvious a myotherapy massage device comprising: a massage head having a motor housing enclosing a vibration means, the motor housing has a tube having bottom and top ends, a bottom cap disposed on the bottom end of the motor housing, and a top cap disposed on the top end of the motor housing opposite the bottom cap; a means for positioning each massage head vertically; and in combination with all the elements and the means

Art Unit: 3764

for positioning the massage heads vertically further comprising other elements as substantially claimed by applicant

The means-plus-function language in the claims indicates that applicant is evoking USC 112 sixth paragraph.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Quang D. Thanh whose telephone number is (703) 605-4354. The examiner can normally be reached on Monday-Thursday & alternate Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu can be reached on (703) 308-2675. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306 for both regular and After-Final communications.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Quang D. Thanh  
Patent Examiner  
Art Unit 3764  
October 29, 2004

QT

  
JUSTINE R. YU  
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10/29/04